

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED

MARISSA BULLOCK,

Claimant,

vs.

STATE OF TENNESSEE,

Defendant.

Claim No. T20060737

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Tennessee Claims Commission
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JUDGMENT

Claimant, Marissa Bullock, has filed this claim for damages arising from personal injuries that she sustained when her hand went through a window that she was attempting to open at Tennessee State University ("TSU"), where she was a student. The Claims Commission has jurisdiction of this matter under Tenn. Code Ann. § 9-8-307(a)(1)(C), relative to negligently created or maintained dangerous conditions on state controlled real property. The Commission makes the following findings of fact and conclusions of law based upon the affidavit proof submitted by the parties.

FACTS

On November 30, 2005, Marissa Bullock was a student at TSU, residing in Halle Hall dorm with her roommate, Charisse Adams. Because she was hot, Ms. Bullock attempted to open the window to her dorm room, which she attests was stuck. The window swung out to open and Ms. Bullock had one hand on the handle and one hand on the glass. As she tried to push the window open, her hand went through the glass, cutting her wrist and requiring sixteen stitches. Ms. Bullock reports that as a result of the accident, she has limited function in her right hand and keloid scar formation.

Ms. Bullock had reported that the window was stuck in August of 2005, after she had moved in to the dorm. Although she had requested that it be repaired, no repair had been undertaken by TSU.

Quinton Christian, Carpenter Lead Worker with TSU's Office of Facilities Management, was assigned to repair the broken window pane in Ms. Bullock's room following her accident. Mr. Christian attests that on December 3, 2005, when he replaced the pane, the metal latch/handle on

the frame was working properly and he was able to open and close the window normally.

According to Mr. Christian, the window has a metal latch on the bottom that must be rotated to open the window. The window can then be opened by pushing out on the metal frame. He indicates that the window was not meant to be opened by pushing on the panes. Christian was not aware of other injuries resulting from attempts to open the windows during the ten years that he has been employed at TSU.

DISCUSSION

As provided for under Tenn. Code Ann. § 9-8-307(c), the State's liability "shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care." Under these concepts, a plaintiff in a negligence action must prove (1) a duty owed to the plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) injury or loss; (4) cause in fact; and (5) proximate cause. *Kilpatrick v. Bryant*, 868 S.W.2d 594 (Tenn.1993); *Lewis v. State*, 73 S.W.3d 88, 92 (Tenn.Ct.App. 2001).

Duty is a legal obligation to conform to a reasonable person standard of care in order to protect others against unreasonable risks of harm. *Satterfield v. Breeding Insulation Co.*, 266 S.W.3d 347, 355 (Tenn. 2008). By operation of Tenn. Code Ann. § 9-8-307, the state owed to Ms. Bullock the same duty of care as a private premises owner. *See Hames v. State*, 808 S.W.2d 41 (Tenn. 1991); *Sanders v. State of Tennessee*, 783 S.W.2d 948 (Tenn.Ct.App. 1989). A premises owner is under a duty to exercise reasonable care under the circumstances to prevent injury to persons lawfully on the premises. *See Eaton v. McClain*, 891 S.W.2d 587, 593-94 (Tenn. 1994). Reasonable care to make the premises safe requires an owner or possessor to not create or maintain dangerous conditions; *see Baisley v. Rain, Inc.*, 29 S.W.3d 879 (Tenn.Ct.App. 2000); and to remove or warn of a dangerous condition about which the owner knows or reasonably should know. *See Eaton v. McClain*, 891 S.W.2d 587, 594.

Foreseeability is the test of negligence. *Doe v. Linder Constr. Co.*, 845 S.W.2d 173, 178 (Tenn. 1992). The scope of the defendant's duty depends upon the foreseeability of the risk. To prevail in a negligence action, a plaintiff must show that the injury was a reasonably foreseeable possibility

and that some action within the defendant's power more probably than not would have prevented the injury. *Dobson v. State*, 23 S.W.3d 324, 331 (Tenn.Ct.App. 2000). A risk is foreseeable if a reasonable person could foresee the probability of its occurrence or if the person was on notice that the likelihood of danger to the party to whom is owed a duty is probable. *Doe v. Linder Const. Co., Inc.*, 845 S.W.2d 173, 178 (Tenn. 1992).

Foreseeability does not require awareness of the precise manner in which an injury takes place, but rather a general awareness that injuries similar to those actually sustained could occur. *McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn. 1991). If the injury which occurred could not have been reasonably foreseen, the duty of care does not arise, and even though the act of the defendant in fact caused the injury, there is no negligence and no liability. *Id.*

Persons seeking to recover in negligence actions must also prove that the defendant's failure to exercise reasonable care was both the cause in fact and the legal cause of their injury or damage. *Draper v. Westerfield*, 181S.W.3d 283 (Tenn. 2005); *Biscan v. Brown*, 160 S.W.3d 462, 478 (Tenn. 2005). They must also present sufficient evidence to establish that the State

had appropriate notice of the dangerous condition in enough time to take appropriate protective measures. *Pool v. State*, 987 S.W.2d 566, 568 (Tenn.Ct.App. 1998).

Ms. Bullock argues that the window was stuck and that she had put in a request for repairs, which had not been completed. Had the repairs been carried out, she maintains that the accident would not have occurred.

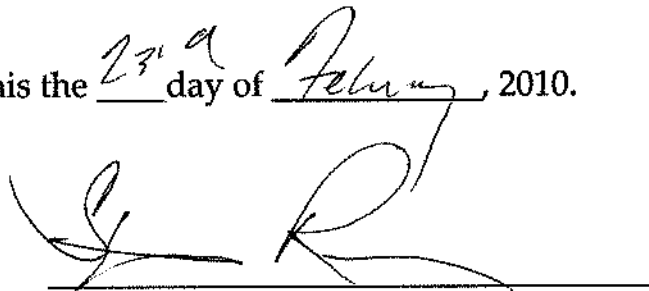
There is no proof of anything inherently dangerous about the stuck window about which Ms. Bullock contends caused her injury. No evidence was produced from which the Commission can conclude that TSU had reason to believe that the window posed a hazard to its occupants of the type which Ms. Bullock encountered. According to Mr. Christian, there were not similar accidents involving windows during his tenure.

The evidence shows that Ms. Bullock's injury occurred when she pushed on the glass portion of the window, which broke and cut her wrist. To demonstrate negligence, Ms. Bullock must show that TSU reasonably knew or should have known of the probability of an occurrence such as the one that caused her injuries. While it is not disputed that the University

had been notified that her window was stuck, it does not follow from that fact that it should have known that Ms. Bullock would therefore try to force the window open or that she would do so by pushing on the window pane rather than the frame, causing the glass to break and injuring her.

Because the Commission cannot conclude that the manner of Ms. Bullock's accident was reasonably foreseeable, the claimant's burden of proof in this matter has not been satisfied and the claim must be dismissed.

It is so **ORDERED** this the 23rd day of February, 2010.

A handwritten signature in black ink, appearing to read 'S. R. Reevers', is written over a horizontal line.

STEPHANIE R. REEVERS
Claims Commissioner

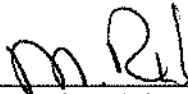
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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MARISSA BULLOCK
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This 23 day of Feb, 2010.



Marsha Richeson, Administrative Clerk
Tennessee Claims Commission